

### REMARKS

Claims 1-20 are pending in this application. Claim 16 is currently amended. Claims 2, 4 and 14-19 are previously presented. Claims 1, 3, 5-13 and 20 are original. No new matter has been introduced.

Applicant's undersigned attorney wishes to express his appreciation to the Examiner for the telephone interview granted on March 20, 2008. The interview was initiated by the undersigned for the purpose of bringing to the attention of the Examiner that claims 16-20 had not been addressed in the Office action mailed October 23, 2007. The interview was recessed briefly while the Examiner reviewed the file, and then continued, with acknowledgement by the Examiner that claims 16-20 had not been addressed, but that these claims contained allowable subject matter and were subject to objection as being dependent from a rejected claim, but would be allowed if rewritten in independent form with all of the limitations of the base claim, and any intervening claims. The Examiner also indicated that she would issue a telephone interview summary making of record this status of claims 16-20. [At the time of filing this response, the summary had not yet been posted at the PAIR web site.]

Claim 16 is currently amended into independent form and now includes all of the limitations of claim 1, from which it previously directly depended. We submit that claim 16 is now in condition for allowance on that basis. We submit further that claims 17-20, all of which depend from claim 16, are also in condition for allowance.

Turning now to the remaining claims 1-15, Applicant's claimed invention is a sleep-aiding device for reducing leg muscle cramping during sleep. The sleep-aiding device comprises a belt member being worn at a wearer's waist in use during sleep; first leg members being worn in use during sleep, with upper end portions attached at the belt member and lower end portions each attached at lower portions of a wearer's legs, below the wearer's knee. The leg members are adjustable to predetermined lengths between attachment at the belt member and attachment at the lower portions of the wearer's legs, the predetermined lengths of the leg members being selected to restrict stretching of the wearer's legs to full extension during sleep. In one embodiment,

shown in FIGS. 1, 2, 3 and 5, the lower end portions of the legs members define loops received about each of the wearer's feet, midway between the toes and ankle.

Claims 1, 3-7 and 10-14 are rejected under 35 USC §102(b) as being anticipated by Toso U.S. 5,643,184. Claims 2, 8, 9 and 15 are rejected under 35 USC §103(a) as being obvious and therefore unpatentable over Toso '184. We respectfully traverse.

As argued by Applicant in an earlier response, and quoted by the Examiner in the present Office action:

Toso '184 does not teach or suggest Applicant's invention, as now more clearly claimed. In particular, Toso '184 fails to teach or suggest first and second leg members of predetermined length between attachment at the belt member and attachment at the wearer's lower leg portions (claim 1), e.g. by lower loops receiving each of the wearer's feet (claims 3-9), e.g. between the toes and ankles (FIG. 1) ..., the predetermined lengths of the leg members being selected to restrict stretching of the wearer's legs to full extension during sleep. Rather, in the back support device of Toso '184, the intermediate knee engaging loops 36 and 38 are formed of "elastic material" (column 2, lines 20-21), and "[b]ecause of the elasticity of the knee loops, the pressure of the feet extends to the lower back while keeping the legs free to move and to be rapidly extended, as may be required when driving." (column 2, 23-26). Thus, contrary to Applicant's sleep-aiding device, the back support device taught by Toso '184 is specifically constructed to permit full extension of the wearer's legs.

In the present action, the Examiner maintains the rejections for anticipation and obviousness, arguing that since the lengths of the straps in the Toso '184 device have the capability of being adjusted, it would be obvious to shorten the straps "to prevent/restrict full extension of the wearer's legs during sleep, even when the strap or a portion thereof is constructed from elastic material."

The Examiner thus proposes to base the rejection of claims 1-15 on modification or adjustment of the Toso '184 prior art device to such a degree that the utility of the Toso '184, as cited above, would be eliminated completely. We submit in response that such a proposal could only result from use of hindsight, with the Applicant's invention serving as a roadmap, which is impermissible grounds for rejections. On this basis, we submit that independent claim 1, and claims 2-15 dependent therefrom, are all distinguished over the prior art and now in condition to be allowed.

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We submit further that this application is now in condition for allowance. Early favorable action is solicited.

Please apply the fee for extension of time, and any other charges or credits, to deposit account 06-1050.

Respectfully submitted,

Date: March 24, 2008

  
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